

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**HOSPITAL OF BARSTOW, INC. D/B/A
BARSTOW COMMUNITY HOSPITAL**

and

Case 31-CA-129445

**CALIFORNIA NURSES ASSOCIATION/
NATIONAL NURSES ORGANIZING COMMITTEE**

ORDER¹

The petition to revoke subpoena duces tecum B-1-IUHNG7, addressed to the Custodian of Records of U.S. Nursing Corporation, is denied. The Petitioner, Hospital of Barstow, Inc. d/b/a Barstow Community Hospital, does not have standing to file a petition to revoke a subpoena that is addressed to a third party unless it establishes that the requested information is protected by a privilege or a right, such as a right of privacy, belonging to the party seeking to revoke.² Here, the Petitioner has provided only conclusory assertions in support of its contention that the subpoenaed documents relating to its agreement with United States Nursing contain confidential information, and has otherwise failed to show that the information sought is protected by any privilege or personal right. See, e.g., *Nova Products, Inc. v. Kisma Video, Inc.*, 220 F.R.D. 238 (S.D.N.Y. 2004) (motion to quash subpoena of documents in possession of arbitrator denied where parties seeking revocation merely asserted that “the subpoena

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² “Ordinarily a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action unless the party claims some personal right or privilege with regard to the documents sought.” *In re Grand Jury Subpoena John Doe, No. 05GJ1318*, 584 F.3d 175, 184 fn. 14 (4th Cir. 2009) citing 9A Wright & Miller, *Federal Practice and Procedure* §2459 (1995).

allegedly touches upon their personal financial affairs,” but “included no evidence” that the arbitration was meant to be private or confidential).³

In addition, even assuming that the Petitioners have such standing, we find that the subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board’s Rules and Regulations. Further, the Petitioners have failed to establish any other legal basis for revoking the subpoena. See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).⁴

Dated, Washington, D.C. April 7, 2015

MARK GASTON PEARCE,	CHAIRMAN
HARRY I. JOHNSON, III,	MEMBER
LAUREN McFERRAN,	MEMBER

³ Thus, we find it unnecessary to pass on the Region’s argument that, even assuming that the Petitioner has standing, the petition is untimely.

⁴ We further reject as without merit the Petitioner’s argument that the subpoena is ultra vires because the Regional Director for Region 31, Mori Rubin, was appointed at a time when the Board lacked a proper quorum. The Board has considered and rejected such arguments directed at similarly-situated Regional Directors. See, e.g., *Pallet Companies*, 361 NLRB No. 33, slip op. at 1-2 (2014) (Regional Director for Region 4). In addition, on July 18, 2014, prior to the issuance of this subpoena, the Board ratified all administrative and personnel decisions made from Jan. 4, 2012 to Aug. 5, 2013, and expressly authorized Rubin’s appointment. Further, on July 30, 2014, Rubin ratified all decisions made between her initial appointment and July 18.

The Petitioner’s argument that Acting General Counsel Lafe E. Solomon’s involvement with Rubin’s appointment renders it invalid because he was not authorized to continue to act in that position is also without merit. See *Benjamin H. Realty Corp.*, 361 NLRB No. 103 (2014).